

040714ES. TXT

EMPLOYMENT SECURITY DEPARTMENT  
STATE OF WASHINGTON

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TRANSCRIPT OF PROCEEDINGS  
of  
UNEMPLOYMENT INSURANCE RULES  
STAKEHOLDER MEETING

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Date and Location

040714ES.TXT

July 14, 2004

Wednesday, 1:30 p.m.

Employment Security Department  
Maple Leaf Conference RM  
212 Maple Park, 2nd Floor  
Olympia, Washington 98506

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BE IT REMEMBERED, that an Unemployment Insurance Rules stakeholder meeting was held at the location and time as set forth above. The Employment Security Department was represented by LARRY OLIVE, Acting Rules Coordinator;

JUANITA

MYERS, Rules Coordinator; and SUSAN HARRIS was also present.

Reported by:

Marcie L. Johnson, CCR  
(License #2744)

EXCEL COURT REPORTING  
16022-17th Avenue Court East  
Tacoma, WA 98445-3310  
(253) 536-5824

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Discussion

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No Break/Recess

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## PROCEEDINGS

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MR. OLIN: All right. Pursuant to authority given to us under RCW 50.12.010, RCW 50.12.040, Chapter 42.30 of the RCW, which is the Open Public Meetings Act and Chapter 34.05 RCW, the Administrative Procedures Act, this hearing is

7 hereby convened beginning at, it looks like, 1:42, July 14,  
8 2004. And this is called the Maple Leaf Conference Room,  
9 Second floor of the Employment Security Department, 212  
10 Maple Park, Olympia, Washington.

11 And this hearing is convened to consider testimony  
12 concerning only the following rule-making proposal: The  
13 unemployment insurance rules related to employer accounts,  
14 employer reporting requirements and penalties, conditions  
15 for relieve of benefits charging, and charges to the  
16 separating employer.

17 Notice of this hearing was published in the Washington  
18 State Register on May 19, 2004, as No. WSR 04-10-114.  
19 Preproposal Statement of Inquiry was filed as WSR 03-14-141.  
20 And it was sent to interested parties on June 17, 2004.

21 My name is Larry Oline. I am the rules coordinator for  
22 the State of Washington Employment Security Department. I'm

23 representing Commissioner Sylvia P. Mundy as hearing officer  
24 presiding at this rule-making hearing.

25 Attending for Employment Security -- why don't we just

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1 have you introduce yourselves.

2 MS. HARRIS: I'm Susan Harris with the unemployment  
3 insurance policy unit.

4 MS. MYERS: My name is Juanita Myers, and I'm the rules  
5 coordinator for the unemployment insurance division.

6 MR. FAJARDO: Arnold Fajardo with the contracts office.

7 MR. OLINE: I don't know if you all want to introduce  
8 yourselves? I guess we could start right here.

9 MS. RYAN: I'm Mary Beth Ryan with Integrated Claims  
10 Management.

11 MR. GONZALEZ: Ray Gonzalez, Boeing Company.

12 MS. GEE: I'm Jan Gee, and I represent the Washington  
13 Retail Association and the Washington Food Industry.

14 MR. MCBRIDE: My name is Tom McBride. I'm with the  
15 Association of Washington Business.

16 MR. RAFFAELL: Norm Raffaeli of Weyerhaeuser Company.

17 MR. TUVEY: Dale Tuvey with United Claims Management.

18 MS. BRACKENBURY: I'm Amy Brackenbury with the Building  
19 Industries Association of Washington.

20 MR. OLINE: Okay. If you have not already done so, and  
21 I believe most of you have, please sign in on the hearing  
22 attendance log that we have over there, and make sure that  
23 you provide all the information requested in the blanks.

24 The attendance log is kept as a permanent record of  
25 this hearing. Only those persons who have provided the

1 information in the attendance log will be called to give  
2 testimony in this hearing.

3 This hearing is convened to consider written  
4 submissions and oral testimony presented on the proposal.  
5 It will consist of two parts. First, a brief technical  
6 presentation on the proposal; and second, oral testimony.

7 Before the agency files the final rule with the code  
8 reviser, a concise explanatory statement of the agency's  
9 reasoning for adopting the rule, including a summary in  
10 response to all comments received, will be sent to the  
11 commissioner and placed in a permanent rule-making file.  
12 Copies will be available upon request.

13 Also please be advised that this hearing is being  
14 recorded and will become part of the official rule-making



15 file.

16 For the technical presentation, at this time I would  
17 like to ask Juanita Myers to briefly explain the proposal.

18 MS. MYERS: Thank you very much.

19 This hearing is on the rules implementing tax portions  
20 of 2nd Engrossed Senate Bill 6097, which was passed by the  
21 legislature last year. This bill contains substantive  
22 changes to the unemployment insurance program, including  
23 establishing new tax rates for employers.

24 The regulations in brief provide: First, the revised  
25 law modifies the contribution rate to be paid by successor

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1 employers. WAC 192-300-050 defines the term "simultaneous

2 acquisition" as it pertains to predecessor/successor  
3 relationships.

4 The legislation also increases the penalties for  
5 employers who do not submit timely and complete tax and wage  
6 reports in the format prescribed by the department.  
7 WAC 192-310-010 is amended to clarify the acceptable format  
8 employers may use when filing their quarterly tax and wage  
9 reports.

10 WAC 192-310-025 is amended to clarify how payments  
11 received from employers without a tax report will be  
12 applied. New fees imposed by the legislation, which are the  
13 costs of audit and collection and penalties for willful  
14 misrepresentation of payroll, are now included in the list  
15 of payments.

16 WAC 192-310-030 specifies the penalties for employers  
17 who file tax and wage reports that are incomplete, late, or  
18 in an incorrect format. The penalty for a late report is

19 \$25. Penalties for a report that is incomplete or in an  
20 incorrect format are \$250 or 10 percent of the quarterly  
21 contributions, whichever is less. If no tax is due, the  
22 penalty for an incomplete report ranges from \$75 to \$250,  
23 and the penalty for incorrect format ranges from \$150 to  
24 \$250. The rule also clarifies that the penalty for an  
25 employer who knowingly misrepresents the amount of his or

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1 her payroll is 10 times the difference between the amount  
2 paid and the amount due, plus the amount that should have  
3 been paid.

4 WAC 192-320-070 is amended to clarify the conditions  
5 under which an employer may request relief of benefit

6 charges due to a voluntary quit.

7       The law as amended provides for some situations in  
8 which 100 percent of benefit charges will be assessed  
9 against the separating employer, rather than shared  
10 proportionately among all base period employers. A new  
11 section, WAC 192-320-075, is adopted to clarify this section  
12 of the law.

13       Finally, the law requires an employer who has knowingly  
14 misrepresented the amount of his or her payroll to reimburse  
15 the department for its reasonable expenses in auditing the  
16 employer's books and collecting sums that are owed. A new  
17 section, WAC 192-340-100, lists the audit expenses the  
18 department may seek to collect from the employer in this  
19 situation.

20       Other information: The department has determined that  
21 changes to other rules or statutes would not achieve the  
22 same regulatory objective.

23       The language of the proposed rules has been shared with  
24 the US Department of Labor. No other state agencies deal  
25 with the subject of the rule.

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1       The department has chosen a reasonable, cost effective  
2 manner of achieving the regulatory objective of the rule.

3       There are no anticipated environment consequences  
4 associated with this rule.

5       There are no anticipated fiscal consequences associated  
6 with this rule.

7       The proposed regulations don't impose more than minor  
8 costs on businesses in general or small business in  
9 particular. Any costs to employers result from the

10 legislation establishing the changes to the unemployment  
11 compensation program rather than from these regulations.

12 Five meetings with stakeholders were held during the  
13 period August 2003 through January 2004. Additional  
14 opportunities to provide written input were also provided.

15 All input has been considered during the formulation of  
16 these regulations.

17 As a side note, I just wanted to point out that we may  
18 be looking at a minor clarification to one of the rules. We  
19 have not yet decided. It was recently brought to our  
20 attention that RCW 50.29.021 may contain what -- it could  
21 have been a scrivener's error, or it might have been  
22 deliberate. We are not certain.

23 The prior law which related to relief of benefit  
24 charges for employers provided that employers could get  
25 automatic noncharging -- the last employer would be

1 automatically noncharged if the individual was allowed  
2 benefits if they voluntarily quit work for a reason not  
3 attributable to the employer or they were discharged for  
4 misconduct.

5       The new statute references the same two statutes 050,  
6 which is the voluntary quit law, and 060, which was the old  
7 misconduct statute. It doesn't refer to the new misconduct  
8 statute, which is RCW 50.20.066. So the law that provides  
9 automatic noncharging to employers no longer refers to the  
10 new misconduct statute. It only refers to the old  
11 misconduct statute, which is no longer in effect for new  
12 claims.

13       So we don't know that it was intentional that employers

14 would be charged for people for misconduct or if that -- and  
15 they could still apply for relief, but there's a difference  
16 between automatic noncharging and application for relief of  
17 benefit charging. So we are still researching that. And if  
18 we are able to determine that it was a scrivener's error, we  
19 may make a minor correction to the rule.

20 Okay, yes.

21 MR. RAFFAELL: If you don't, will you send a form that  
22 indicates that if you want to get relief it's necessary for  
23 the employer to request relief?

24 MS. MYERS: Yes.

25 MR. RAFFAELL: Okay.

1 MS. MYERS: Thank you.



2 MR. OLIVE: Now, at this time I would like to hear  
3 testimony from those who provided that on the attendance log  
4 here. And let me know if I have this information correct on  
5 here.

6 First off providing testimony is Dale Tuvey from United  
7 Claims Management; isn't that correct?

8 MR. TUVEY: That is correct. Well, I'm going to go  
9 through these various sections, and I will try to reference  
10 the section number as I'm going so --

11 I will start with the short little one here. This is  
12 relating to employer reporting requirements, penalties,  
13 conditions for relief of benefit charging and charges to the  
14 separating employer. And I have to apologize. Some of  
15 these may be in the form of questions as much as they are  
16 comments, just to get a little bit of understanding  
17 especially with a couple of these early ones. I'm looking

18 at WAC 192-320-075. Page 5, isn't it?

19 MS. MYERS: Yes.

20 MR. TUVEY: The thing starts out and it says, "If a  
21 claimant voluntarily quits work to accept a job with a new  
22 employer..." now, it with some frequency happens that an  
23 employee will tell the employer that they are quitting work  
24 to go to work for a new employer, but by the time they get  
25 down to the employment office they all of a sudden have a

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1 different reason. I think there could be some clarification  
2 as to, you know, is this to the employer, or is this to the  
3 department, or is this based on the department's  
4 investigation and a factfinding decision that, in fact, you  
5 know, what their reason was? Because as I say, that happens

6 with some degree of frequency that it's an easy way for the  
7 employee to say, "I'm quitting. I got another job." And it  
8 turns out there may be something else. So think that bears  
9 some scrutiny.

10 In addition, in both that first section and the second  
11 section, it requires the new employer to be a base year  
12 employer. And there are a very large number of times when  
13 the new employment is, if you want to call it, an employment  
14 of convenience for a very short period of time that the  
15 person winds up -- the new employer winds up not being a  
16 base year employer. So I think those references to it being  
17 a base year employer -- that reference that the quit needs  
18 to be a base year employer needs to be deleted in all those  
19 sections.

20 That's all I have on that section.

21 When you get to the section regarding the benefits, I

22 guess, we'll take next. Let's see.

23 First, I'm going to go over to page 7. This is

24 WAC 192-130-080.

25 MS. MYERS: I'm sorry. That's for the next hearing

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1 that's at 2:30.

2 MR. TUVEY: Oh, that's the next hearing. All right.

3 So what else do you have? Do you have job search under this  
4 one?

5 MS. MYERS: That's the next one.

6 MR. TUVEY: Oh, all right.

7 MS. MYERS: This is just the tax rules right now.

8 MR. TUVEY: Oh, then I've got nothing else to say.

9 MR. OLIVE: Well, next it looks like -- well, Juani ta,

10 you wanted to provide some comments.

11 MS. MYERS: I did.

12 MR. OLINE: And you did that.

13 And the next, Norm Raffaelli. Did I pronounce that  
14 right?

15 MR. RAFFAELL: Yeah.

16 MR. OLINE: With the AWB.

17 MR. RAFFAELL: Right. I'm with AWB. I'm with their  
18 unemployment committee, and that's what I'm speaking as now.  
19 And I think Dale also was with the AWB.

20 We had submitted some written proposals, and we wanted  
21 to still stand by those. And I believe Tom -- I don't know  
22 if you've got copies of that. I believe they probably are  
23 part of the record already. Do you need another copy?

24 MS. MYERS: No. We have them.

25 MR. RAFFAELL: Okay. And we just felt that those were

1 important changes and realistic changes.

2 I would like to thank you now, as well as under the  
3 benefits section, for the hard work the two of you and  
4 anybody working with you has done. It's taken a long time.  
5 I don't know whether it's been ten months or a year that  
6 you've been working on this. And you have done a very good  
7 job. I have been to a number of your hearings, and it is  
8 not an easy task. And for you to persevere and still be  
9 probably in your normal senses, I think is wonderful. And I  
10 thank you for all the hard work you've done. I'm sure  
11 everybody here would agree. But that's all I have.

12 MR. OLINE: Okay. Is that all?

13 MR. RAFFAELL: Yes.

14 MR. OLINE: Okay, thank you.

15 Just joining us is Dan or Don?

16 MR. SEXTON: Dan.

17 MR. OLINE: Dan Sexton from the WSBCTC.

18 MR. SEXTON: Washington State Building Construction

19 Trades Counsel. How are you doing?

20 MR. OLINE: Great. You wanted to provide some

21 testimony?

22 MR. SEXTON: Actually, I was here for the next hearing.

23 Well, as long as I'm here, yeah, of course I want to provide

24 some testimony.

25 You know, I apologize that I just started work on this

1 package this morning and have not -- been busy. Have not  
2 even had the chance to look at this yet.

3 It just comes to mind that -- I know that there's  
4 successor language now in, what, three different places, you  
5 know, at L & I and at the Department of Revenue and at ESD.  
6 And I don't know to what extent we've tried to streamline  
7 that or coordinate that or put those pieces together or if  
8 we've been looking at those or they've been looking at this,  
9 or vice versa. But it's not too late to do that. And so  
10 that would be my only suggestion, my only comment.

11 MR. OLIVE: Okay.

12 That's all that have provided comments that they wanted  
13 to provide testimony.

14 MS. MYERS: Okay.

15 MR. OLIVE: I would like to wrap up.

16 This hearing was convened to consider testimony on the  
17 amended rules to define terms regarding ownership transfer,



18 and clarity in declaring employer reporting requirements,  
19 and to specify the order in which employer payments will be  
20 applied.

21 All oral testimony presented here and written  
22 submissions will become part of the official record. The  
23 deadline for submitting written comments will be 5:00 p.m.  
24 today.

25 MS. MYERS: Excuse me. We will extend that out a week.

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1 MR. OLINE: Oh, you want to?

2 MS. MYERS: Yes.

3 MR. OLINE: Okay.

4 MS. MYERS: To next week. Next Wednesday at 5:00 p.m.

5 MR. OLINE: Next Wednesday. And the date?

6 MS. MYERS: The 21st of July.

7 MR. SEXTON: Next Wednesday.

8 MR. OLINE: Yeah, July 21, 5:00 p.m.

9 And you should address those to Juani ta Myers, here, at  
10 Washi ngton Emp loy ment Securi ty Department, 212 Map le Park,  
11 P.O. Box 9046, Mail stop 6000, Olym pi a, Washi ngton  
12 98507-9046.

13 The final decision regarding adoption of this proposed  
14 rule-making will be made after all testimony and written  
15 comments have been considered.

16 Does anybody at this time wish to offer further  
17 testimony concerning the proposed rule-making before us  
18 today?

19 If not, on behalf of the commissioner, Syl vi a P. Mundy,  
20 thank you for participating in this hearing. And this  
21 hearing is adjourned at 2:02, July 14, 2004.

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(Whereupon, at 2:02 p.m.,  
the proceedings concluded.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON )  
4 County of Kitsap ) ss.

5

6 I, Marcie L. Johnson, a Certified Court Reporter in and  
7 for the State of Washington, do hereby certify:

8 That the foregoing transcript of proceedings was taken  
stenographically before me and transcribed under my  
direction; that the transcript is an accurate transcript of

9 the proceedings insofar as proceedings were audible, clear  
and intelligible; that the proceedings and resultant  
10 foregoing transcript were done and completed to the best of  
my abilities for the conditions present at the time of the  
11 proceedings;

12 That I am not a relative, employee, attorney or counsel  
of any party to this matter, and that I am not financially  
13 interested in said matter or the outcome thereof;

14 IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my official seal on this 14th day of August, 2004,  
15 at Port Orchard, Washington.

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